DISCRIMINATION LAW:

EQUALITY IN THE PRIVATE SECTOR

2005-2006

Volume 2

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CHAPTER 3: LIMITS ON THE RIGHT TO EQUAL TREATMENT

A Bona Fide Requirements and Reasonable Accommodation

NOTE: In *O'Malley*, the Supreme Court distinguished cases of direct discrimination from those involving discriminatory effects in order to hold that the latter could be covered by the prohibition on discrimination. The former kind of case, when a Respondent explicitly uses a prohibited ground as an exclusionary criterion, is a more obvious form of discrimination. In such circumstances, there can be no doubt that those identified by the ground have been discriminated against "because of" their membership in that group. However, liability does not necessarily follow, even in this paradigmatic form of discrimination. All Human Rights Codes have exculpatory provisions allowing Respondents in some spheres, with respect to some grounds, to argue that the use of the ground to exclude some from the benefit in issue is *bona fide* and therefore not discriminatory.

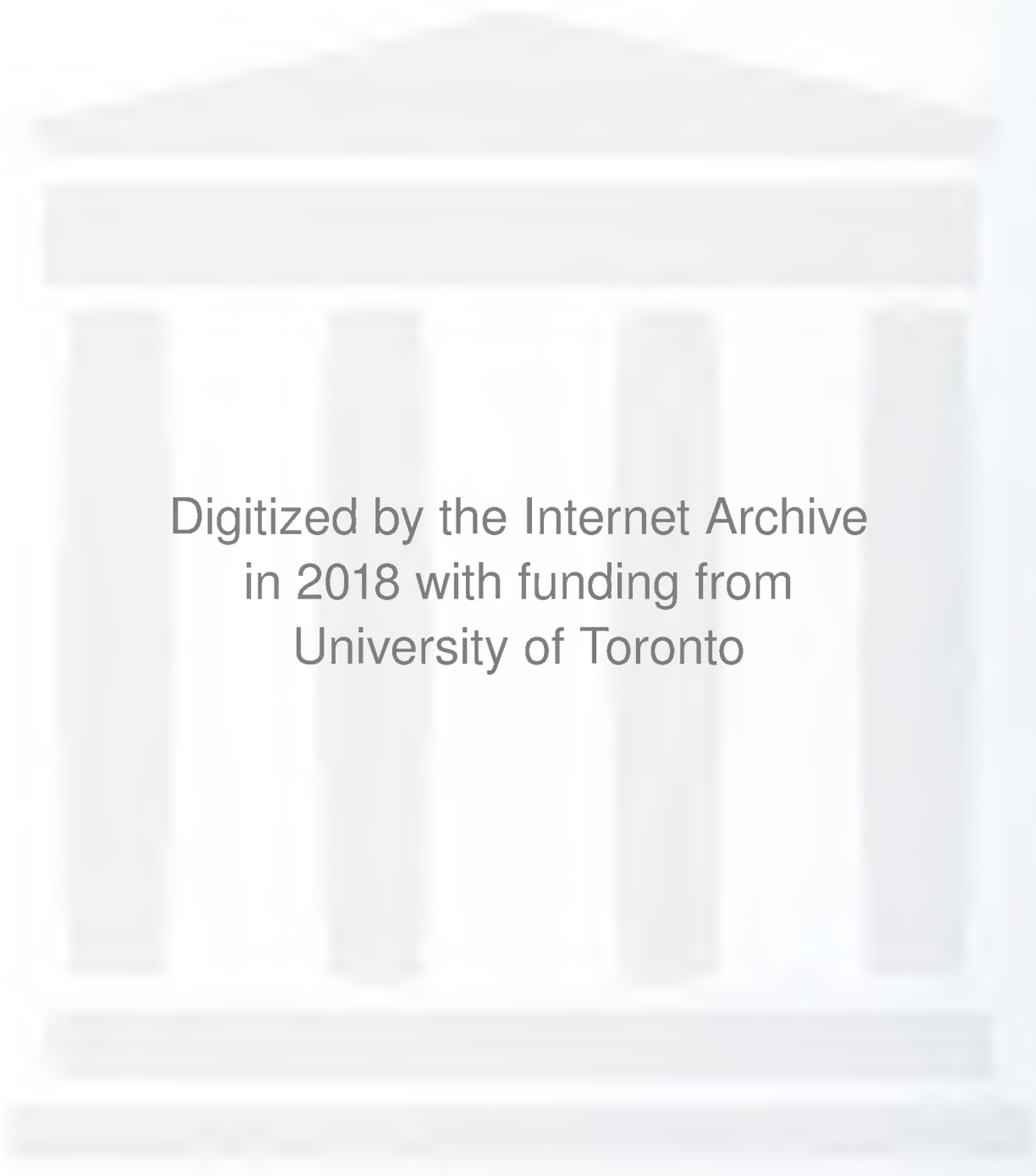
Therefore, we cannot say we really understand the cause of action in full, and perhaps discrimination itself, until we bring these exculpatory conditions into play. To understand the relationship between the right to equal treatment without discrimination and the limits on that right, we start with the *bona fide* requirement (BFR) exemption from liability for *direct* discrimination. The first question, then, is what makes the exclusion of particular groups a *bona fide* requirement so as to negate liability. Once we have a clearer picture about this, we can consider the circumstances under which, despite the reasonableness, in general, of his or her behaviour, a Respondent can be required to make efforts to accommodate the needs of members of a group identified by a prohibited ground.

The first steps in the Ontario jurisprudence on this question have been shaped by the structure of the *Code*. At the time that the litigation in *Etobicoke*, below, arose, the relevant provisions of the *Code* were as follows:

> 4(1) No person shall,
>
> ...
>
> (b) dismiss or refuse to employ or to continue to employ any person;
>
> because of race, creed, colour, age, sex, marital status, nationality, ancestry, or place of origin of such person or employee.
>
> ...
>
> (6) The provisions of this section relating to any discrimination, limitation, specification or preference for a position or employment based on age, sex or marital status do not apply where age, sex or marital status is a bona fide occupational qualification and requirement for the position or employment.

Section 4(1) prohibits certain conduct, while s. 4(6) outlines conditions under which that prohibition does not apply. The early cases should be read in light of this structure.

Compare the equivalent provisions in the current *Code*. Has the structure changed in any significant sense?



NOTE: The main interpretive challenge in *O'Malley* was the fact that the provision in the Ontario Code limiting the right to equal treatment without discrimination in respect of employment (the BFR clause) did not apply to discrimination because of religion. In other words, the list of grounds on which discrimination was prohibited was longer than the list of grounds open to an exculpatory BFR argument. In recognizing that a policy having differential adverse effects on members of a particular religion constitutes discrimination because of religion, the Supreme Court recognized that there could be circumstances in which liability should nevertheless not be imposed, that is, limits to the right not to suffer adverse effects discrimination. It held that Respondents have a duty to accommodate the needs of those adversely affected by a discriminatory policy, but only up to the point of undue hardship. That is, the Court crafted its own exculpatory doctrine to fill the gap in the Ontario Code. In doing so, it did not use the language of BFR, the phrasing used in the exculpatory provisions of most Codes of the time, but rather the language of accommodation up to the point of undue hardship.

The Ontario *Code* represented one standard model of drafting at the time of *O'Malley*. The *Canadian Human Rights Act* of the time illustrates a different model. The federal *Act* includes the usual list of prohibited grounds of discrimination. However, its exculpatory provision – drafted using BFR language, is more general than the Ontario *Code*'s. Compare the relevant Ontario provisions as at the time of *O'Malley* with their *CHRA* counterparts:

Ontario Human Rights Code (as at 1980)	***Canadian Human Rights Act*** (as at 1977)
4(1) No person shall, ... (*g*) discriminate against any employee with regard to any term or condition of employment, because of race, creed, colour, age, sex, marital status, nationality, ancestry, or place of origin of such person or employee.	**7.** It is a discriminatory practice, directly or indirectly, (*a*) to refuse to employ or continue to employ any individual, or (*b*) in the course of employment, to differentiate adversely in relation to an employee, on a prohibited ground of discrimination. **10.** It is a discriminatory practice for an employer or an employee organization (*a*) to establish or pursue a policy or practice, ... that deprives or tends to deprive an individual or class of individuals of any employment opportunities on a prohibited ground of discrimination.
4(6) The provisions of this section relating to any discrimination, limitation, specification or preference for a position or employment based on *age, sex or marital status* do not apply where *age, sex or marital status* is a bona fide occupational qualification and requirement for the position or employment.	**14.** It is not a discriminatory practice if (*a*) *any* refusal, exclusion, expulsion, suspension, limitation, specification or preference in relation to any employment is established by an employer to be based on a *bona fide* occupational requirement;

The language of the federal *Act* was more conducive to an interpretation of the concept of discrimination that includes apparently neutral policies that adversely affect those

identified by reference to a prohibited ground. Indeed, the Supreme Court had no trouble in *Bhinder v. C.N.*, excerpted below, in finding that the federal *Act* covers adverse effects discrimination, that is, the right not to be discriminated against includes the right not to suffer adverse effects connected to a prohibited ground.

That left the question of the interpretation of them federal *Act*'s BFR-based exculpatory provision in such a case. Note that the *Act*'s BFR clause applies to any discriminatory act or policy, no matter what the prohibited ground, and to both explicit use of a prohibited ground and facially neutral policies having a discriminatory effect. *Etobicoke* established a test for satisfying the BFR 'defence' in the case of the explicit use of a prohibited ground; how would that test be applied or adapted in an adverse effects case? The Court split three ways on the correct way to interpret the BFR proviso in an adverse effects case given the drafting of the federal *Act*.

Bhinder v. CN

[1985] 2 S.C.R

Present: Dickson C.J. and Beetz, Estey, McIntyre, Chouinard, Lamer and Wilson JJ.

The reasons of Dickson C.J. and Lamer J. were delivered by

1.THE CHIEF JUSTICE (*dissenting*)--...

3 In the present case, the Tribunal found the respondent, Canadian National Railway Company (CN), to be liable for discrimination against Mr. Bhinder, one of the appellants, under the *Canadian Human Rights Act*. Mr. Bhinder was required to wear a safety helmet as a condition of employment. If he complied with this requirement he would be unable to wear a turban and this would be contrary to fundamental tenets of the Sikh religion of which he is a member. The Tribunal, in coming to its conclusion, held that (1) unintentional and adverse effect discrimination are prohibited under ss. 7 and 10 of the *Canadian Human Rights Act*; and, (2) the safety helmet rule was not a *bona fide* occupational requirement under s. 14(*a*) of the Act because CN did not fulfill its duty to accommodate Mr. Bhinder's religious needs.

...

5 With respect, I am unable to agree with McIntyre J.'s decision that the Tribunal erred in law in its interpretation of the *bona fide* occupational requirement in s. 14(*a*) of the Act. I believe the Tribunal was correct in concluding the respondent employer had not established the *prima facie* discriminatory practice of requiring a Sikh to wear a safety helmet was based on a *bona fide* occupational requirement.

...

6 ... The root of the *bona fide* exception is, according to the Tribunal, "the ability of an employee to perform his or her duties", and the definition of what is a *bona fide* occupational requirement must be determined on a case by case basis according to the demands of particular jobs. A policy which discriminates against an individual on religious grounds will not, according to the Tribunal, be a *bona fide* occupational requirement unless the risks and costs incurred by the employer in accommodating the religious requirements of the individual outweigh the individual's freedom from religious discrimination. Where the practice of an employee's religious beliefs does not affect his or her ability to perform the duties of the job, nor jeopardize the safety of the public or other employees, nor cause undue hardship to the employer, either in a practical or economic sense, then a policy which restricts that practice is not a *bona fide* occupational requirement.

...

9 The words "*bona fide* occupational requirement", in isolation, are elastic in the sense they are capable of having more than one meaning. Accordingly, they must be interpreted and given

conclude then that an otherwise established *bona fide* occupational requirement could have no application to one employee, because of the special characteristics of that employee, is not to give s. 14(*a*) a narrow interpretation; it is simply to ignore its plain language. To apply a *bona fide* occupational requirement to each individual with varying results, depending on individual differences, is to rob it of its character as an occupational requirement and to render meaningless the clear provisions of s. 14(*a*). In my view, it was error in law for the Tribunal, having found that the *bona fide* occupational requirement existed, to exempt the appellant from its scope.

...

46 I cannot, however, leave this case, without further reference to the case of *O'Malley*. On facts for all purposes identical to those at bar, Mrs. O'Malley has received protection from the religious discrimination against which she complained and Bhinder has not. The difference in the two cases results from the difference in the two statutes. The *Ontario Human Rights Code* in force in the *O'Malley* case prohibited religious discrimination but contained no *bona fide* occupational requirement for the employer. The *Canadian Human Rights Act* contains a similar prohibition, but in s. 14(*a*) is set out in the clearest terms the *bona fide* occupational requirement defence. As I have already said, no exercise in construction can get around the intractable words of s. 14(*a*) and Bhinder's appeal must accordingly fail. It follows as well from the foregoing that there cannot be any consideration in this case of the duty to accommodate referred to in *O'Malley* and contended for by the appellants. The duty to accommodate will arise in such a case as *O'Malley*, where there is adverse effect discrimination on the basis of religion and where there is no *bona fide* occupational requirement defence. The duty to accommodate is a duty imposed on the employer to take reasonable steps short of undue hardship to accommodate the religious practices of the employee when the employee has suffered or will suffer discrimination from a working rule or condition. The *bona fide* occupational requirement defence set out in s. 14(*a*) leaves no room for any such duty for, by its clear terms where the *bona fide* occupational requirement exists, no discriminatory practice has occurred. As framed in the *Canadian Human Rights Act*, the *bona fide* occupational requirement defence when established forecloses any duty to accommodate.

47 ...Whether a statutory change to create a similar exemption for application in the work place is desirable in Canada is not a matter for this Court, and it is my opinion that this Court may not create such an exemption judicially. I would therefore dispose of this appeal as indicated above.

NOTE: As a result of this decision there seemed to be two different exculpatory doctrines or ways of conceptualizing the limits on the right to equal treatment without discrimination, depending on whether the BFR test of *Etobicoke* was held to apply or the seemingly more flexible duty of reasonable accommodation from *O'Malley*. The differences between the two approaches spawned a wave of litigation and redrafting of statutes.

In response *inter alia* to the litigation in *O'Malley*, the Ontario legislature amended the Code in 1981 to explicitly indicate that "constructive discrimination" is prohibited. S. 10 of the 1981 Code read as follows:

> (1) A right of a person under Part I is infringed where a requirement, qualification or consideration is imposed that is not discrimination on a prohibited ground but that would result in the exclusion, restriction or preference of a group of persons who are identified by a prohibited ground of discrimination and of whom the person is a member, except where,
>
> (a) the requirement, qualification or consideration is reasonable and *bona fide* in the circumstances; or
>
> (b) it is declared in this Act that to discriminate because of such ground is not an infringement of a right

The SCC decision in *Bhinder*, in deciding that no duty to accommodate arises in circumstances in which a requirement has been found to be a BFOQ, threatened substantially to reduce the scope of the intended expansion of the *Code* to encompass constructive discrimination. In 1986, through the passage of the *Equality Rights Statute Law Amendment Act* (S.O. 1986, c. 64), this problem was rectified by introducing an explicit requirement to make reasonable accommodation even in cases of constructive discrimination. The new provision, now numbered s. 11, reads as follows:

> 11(1) A right of a person under Part I is infringed where a requirement, qualification or factor exists that is not discrimination on a prohibited ground but that results in the exclusion, restriction or preference of a group of persons who are identified by a prohibited ground of discrimination and of whom the person is a member, except where,
>
> (a) the requirement, qualification or factor is reasonable and *bona fide* in the circumstances; or
>
> (b) it is declared in this Act, other than in section 17, that to discriminate because of such ground is not an infringement of a right.
>
> (2) The Commission, a Board of Inquiry, or a court shall not find that a requirement, qualification or factor is reasonable and *bona fide* in the circumstances unless it is satisfied that the needs of the group of which the person is a member cannot be accommodated without undue hardship on the person responsible for accommodating those needs, considering the cost, outside source of funding, if any, and health and safety requirement, if any.
>
> (3) The Commission, a Board of Inquiry or a court shall consider any standards prescribed by the regulations for assessing what is undue hardship.

The cases that follow track the courts' attempt to determine which approach to determining the limits on the right to equal treatment without discrimination applies when, always taking account of the specific provisions of the legislation in issue.

Brossard v. Québec (Commission des droit de la personne)

[1988] 2 S.C.R. 279

The judgment of Beetz, McIntyre, Lamer and La Forest JJ. was delivered by

BEETZ J. — The town of Brossard, in a good faith effort to combat nepotism within the local public service, has adopted a hiring policy which disqualifies members of the immediate families of full-time employees and town councillors from taking up employment with the town. Can the town exclude this class of applicant without practising discrimination in employment, thereby violating one of the rights and freedoms protected by the Quebec *Charter of Human Rights and Freedoms*, R.S.Q. 1977, c. C-12?

I Facts and Proceedings

...

The mis en cause, Line Laurin, fell prey to the rule. She applied for summer employment with the respondent as a lifeguard and, pursuant to the anti-nepotism policy, her application was not considered because her mother worked as a full-time typist at the municipal police station.

...

Resolution of this appeal requires the Court to ... establish whether the exclusion of members of the immediate families of full-time employees and town councillors is deemed non-discriminatory

> Where access to benefits in employment is at issue, adverse effect discrimination is established when benefits otherwise generally available to employees are limited or denied to certain employees on the basis of a prohibited ground of discrimination. Unequal treatment is identified by comparing the situation of the group adversely affected because of a protected ground with the group to whom the benefit is generally available.

(Emphasis added)

In my view, this submission does not describe a violation of s. 11 of the Code. Rather, the submission alleges direct discrimination under s. 5, a submission that I have already disposed of against the appellant. This does not, however, end the matter. ... I am satisfied that even if the rule respecting employer contributions to benefit plan premiums constitutes constructive discrimination, properly understood, the justification in s. 11(1)(b) for a *bona fide* occupational qualification (BFOQ) applies.

...

Assuming that the rule respecting employer contributions to benefits plans constitutes constructive discrimination, I am satisfied that the justification in s. 11(1)(b) applies. Requiring work in exchange for compensation is a reasonable and *bona fide* requirement. There is no suggestion that the employer can do anything to accommodate the needs of this group or modify the requirement to place them in a position where they can perform the work. Further, as I have not found direction discrimination under s. 5, the rule in the collective agreement stands.

...

[**Note:** We will postpone an examination of Rosenberg J.'s reasoning on the BFR issue until a later chapter. For now, notice how (non)availability for work operates in each part of Rosenberg J.'s argument.]

******

Note: In *Ouimette v. Lily Cups Ltd.* (1990), 12 C.H.R.R. D/19, the complainant claimed that her employer's policy of dismissing any probationary employee who was absent from work for three days during the 60 day probationary period constituted discrimination on the basis of disability. The Complainant missed three days from work and was dismissed. Two of the three days of absence were due to the flu, and the Board of Inquiry held that having the flu is not a disability within the meaning of the Ontario Code. The third day of absence, the complainant claimed, was due to having suffered an asthmatic reaction to aspirin contained in a pain remedy, which the complainant said she took not realizing that it contained aspirin (to which she knew she was allergic). The Board held that dismissal was not discriminatory because it was the complainant's own fault that she missed work because of the allergic reaction. Presumably this conclusion would have held even if all three days' absence had been related to the allergic reaction.

[52] The findings of fact resulted in the conclusion that there was no discrimination by any of the respondents on the basis of allergic reaction resulting in an asthmatic attack. ...

[53] ... [T]here is no doubt that Ms. Ouimette, according to the testimony of her own physician, had been warned by her physician only a short time before the incident to avoid aspirin. That caution was both clear and specific: If she took aspirin, she could expect an asthmatic attack.

[54] Granted that Ms. Ouimette suffered from allergies that could manifest themselves in an asthmatic incident. As the Commission, itself, made great efforts to demonstrate, the asthma from which Ms. Ouimette suffered was extrinsic. That is, it was caused by allergies or other factors external to her. ...

Ms. Ouimette had the power to control the ingestion of aspirin. She knew that she had to be careful; her doctor told her so. He said some responsibility had to be assumed by her as patient for her own health. Ms. Ouimette had stated that her asthma was under control at all times during her employment. For a time, that control was lost when she failed to even ask about the composition of the medicine a friend had handed her to relieve pain.

[55] Is this the kind of fact situation to which the handicap protections of the *Human Rights Code* are intended to apply? I think not. I think to press such a fact situation to complaint trivializes the broad and important principles of the *Human Rights Code.*

*****

Bhadauria v. Toronto (City) Bd. of Education

(1990), 12 C.H.H.R. D/105 (Ont. Bd. Inq.)

Note: Mr. Bhadauria alleged that the selection practices used by the Toronto Board of Education between 1980 and 1984 had an adverse impact on him and other persons of South Asian origin. The Board relied heavily on personal interviews in choosing vice-principals. Mr. Bhadauria contended that this disadvantaged persons from South Asian cultures who are likely to be more deferential and less outgoing in a formal interview than candidates of Western European origin.

Mr. Bhadauria began teaching in 1971. He had an excellent record, and was highly thought of by colleagues and supervisors. He had experience as a department head and summer school principal. Between 1980 and 1984, he applied 39 times for a vice-principalship. He was selected for a pre-interview 4 times, but was never selected for a full interview and therefore never appointed as a vice-principal.

Introduction

[3]... [T]his case has scrutinized the promotional process adopted by the respondent Board of Education, its impact on Mr. Bhadauria, as a South Asian, and on South Asians in general. In the words of counsel for the Commission:

> The issue of whether Mr. Bhadauria was the best person or not, is not the issue because that is a direct discrimination issue. The question is, was the process of selection such as to disadvantage him [Bhadauria] and other South Asians...

...

(B) JAGDISH BHADAURIA

[9] Mr. Bhadauria is a man of considerable charm, intelligence and accomplishment. He was born in New Delhi, India in 1940. He is the oldest son of a family of the Kashatara caste which he describes as "second in the pecking order" of castes in India and which represents the "ruling caste." He received undergraduate and graduate education in India achieving a Master of Science in Physics. He deliberately chose to enter the teaching profession, declining the opportunities in India for financial gain in industry and science. However, he then chose to move to England in 1964 in a quest for what he describes as "upward mobility." He successfully taught in England in a series of schools, including one which was a holding centre for "young criminals" pending their trials. He then emigrated to Canada in 1970 and began teaching with the Toronto Board of Education in 1971. In 1972 he followed the wishes of his parents and returned to India to complete a traditionally arranged marriage to a woman of his own caste. He pursued his education, attaining a Master of Education from OISE [Ontario Institute for Studies in Education] in 1982. He has done some work towards a Ph.D. with the University of New Delhi and towards an LL.B. with London University.

Note: in *Oak Bay Marina Ltd. v. British Columbia (Human Rights Tribunal) (no. 2)* (2002), 43 C.H.R.R. D/487, the B.C. Court of Appeal dealt with an appeal from a Tribunal decision holding that Robert Gordy had been discriminated against by Oak Bay Marina on the basis of a mental disability. In the summers of 1994 and 1994, Gordy had successfully worked as a fishing guide for OBM at its lodge in Campbell River. In May 1995, he developed bipolar affective disorder and was hospitalized for two weeks. On June 6, not yet fully recovered from a manic episode, Gordy met with the lodge manager to inquire about returning to work as a guide. It was conceded that at that date, Gordy was behaving strangely and was not yet capable of returning to work. In fact, he went back to hospital on June 6, where he remained until June 23. Gordy met with the manager again on July 17, indicating that he was stable and wanted to return to work. The manager refused to let him return to work, but invited him to return later in the summer. Gordy took this as a refusal to employ him. On July 19 he met with his doctor and asked him to write to OBM about his fitness to work. His doctor wrote that day, assuring OBM that Gordy was fit to work and offering to provide further information about bipolar disorder as desired. OBM did nothing in response to the doctor's letter. Gordy filed a human rights complaint.

The Tribunal accepted the medical evidence that Gordy was fit to return to work provided some accommodations were made such as monitoring to detect onset of a manic phase, allowing a gradual return to full hours, and having him accompanied by another guide as was done with rookie guides. The Tribunal held that OBM's manager should not have considered Gordy's erratic behaviour on June 6 in making his decision about whether to allow him to return to work on July 17. Rather, OBM should have contacted Gordy's doctor to get his assessment, and then investigated whether accommodations could be made that would have allowed Gordy safely to return to work. OBM was found to have discriminated against Gordy on the basis of disability and to have failed to make out a BFR defence. Thus, the Tribunal held that evidence of Gordy's earlier erratic behaviour was irrelevant to whether OBM's refusal to rehire was *bona fide*. This decision was appealed to the B.C. Supreme Court, which held that it was an error of law to hold that the evidence of Gordy's behaviour on June 6 was irrelevant to the decision whether he could safely be allowed to return to work.

On appeal to the B.C. Court of Appeal, the Court agreed that Gordy's behaviour on June 6 was relevant and remitted the case to the Tribunal "so that the issue of BFOR may be decided upon all relevant evidence and on whatever facts may be found by the new adjudicator."

Newbury J. also offered the following *obiter* comments at para. 26:

> In light of the extensive submissions we received, I also wish to comment on [an]other aspect of Mr. Gordy's case ... [I]t was said that even if OBM had had extensive medical information regarding bipolar disorder prior to June 1995, and even if that information had indicated that Mr. Gordy could not be rehired without jeopardizing guests' safety, then without anything more OBM should still be found liable under s. 13 of the *Code* by reason of "failure to investigate". I do not read any of the authorities to which we were referred as going so far as to impose a "process" of investigation on an already informed employer. If, as McLachlin C.J.C. suggested in *Grismer* (at § 43) and *Meiorin* (at §35–36), the question of accommodation is to be approached with some "common sense", it seems to me that the employer's, as well as the complainant's, circumstances would have to be considered carefully in imposing such an obligation. What is "possible" for one employer – e.g., a government with entire departments and volumes of information available to it – may not be possible for a private company that has to make a decision amid operational pressures posed by scheduling, customer relations, profitability and legal liability. (Certainly, the Tribunal Member gave no consideration to whether OBM would have been under a "duty to warn" its guests

of the risks posed by using Mr. Gordy's services.) Similar considerations bear on the other aspects of accommodation – whether the employer can in fact fit in a gradual return to work or place the employee elsewhere, or can actively supervise him or her or "monitor" his or her medications. These are more subtle and difficult questions that were overshadowed in this case by the Member's assumption that direct experience could not be considered by OBM in making its decision.

Saunders J. offered her own comments as follows:

The *Human Rights Code,* R.S.B.C. 1996, c. 210 is, as my colleague observes, applicable to both public and private employers, large and small. Some employers have considerable internal resources and some have only the business and practical acumen acquired in a lifetime. Given the breadth of the legislation's application and its intimate effect upon the essential operations of the workplace, it is important, in my view, to acknowledge that the legislation does not require that issues be referred to professional experts, not always readily accessible in this vast province. Where, as here, a decision may be based upon personal observation and a general understanding of attendant risks, I would not preclude the decision maker from supporting its view of the risks with after-acquired knowledge, to the extent it may be able to do so. This necessarily means that mere failure to investigate is not, itself, a breach of the legislation, although clearly an employer who seeks more comprehensive knowledge when faced with a decision is less likely to base a decision upon unsupportable impressions.

The value of human rights legislation is great and the courts accord more than usual deference to decisions of human rights tribunals. Human rights legislation, however, fits within the entire legal framework within which enterprises must function. That framework includes other standards that also reflect deep values of the community such as those established by workers' compensation legislation prohibiting an employer from placing an employee in a situation of undue risk, and the standards of the law of negligence, for example the standard that applies to Oak Bay Marina Ltd. for its clients. Even as full adherence must be given to the standards of human rights, a human rights tribunal must be mindful of the fuller legal framework regulating an enterprise when it assesses the occupational requirements asserted by that enterprise, and decide in a fashion harmonious with that framework in order not to force non-compliance with some legal obligations in exchange for compliance with the human rights legislation.

*****

Nixon v. Vancouver Rape Relief Society

2002 BCHRT 1

Note: For the facts leading to this litigation, see the decision at an earlier stage (*Vancouver Rape Relief Society v. British Columbia (Human Rights Commission)* reproduced in Chapter 2, p.95.

Bona Fide Occupational Requirement or Justification

[149] Rape Relief submits that its volunteer work is subject to a *bona fide* occupational requirement of life-long experience of the social subordination of women. It is their position that this life experience is required from both the therapeutic perspective of peer counselling and from the political perspective of Rape Relief's work.

...

The Applicable Law With Respect to the Justification Defence

[176] Section 13(4) of the Code provides that: Subsections (1) and (2) do not apply with respect to a refusal, limitation, specification or preference based on a *bona fide* occupational requirement.